

105TH CONGRESS
1ST SESSION

S. 291

To provide for the management of the airspace over units of the National Park System, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7, 1997

Mr. AKAKA (for himself, Mr. FRIST, and Mr. INOUE) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To provide for the management of the airspace over units of the National Park System, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Parks Air-
5 space Management Act of 1997”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) Commercial air tour flights over units of the
9 National Park System (referred to in this Act as
10 “units”) may have adverse effects on the units.

1 (2) The flights may degrade the experiences of
2 visitors to the affected areas and may have adverse
3 effects on wildlife and cultural resources in those
4 areas.

5 (3) A significant number of complaints about
6 commercial air tour flights over certain areas under
7 the jurisdiction of the National Park Service have
8 been registered.

9 (4) Although resource preservation is the pri-
10 mary responsibility of the National Park Service, the
11 agency continues to struggle to develop a policy that
12 would achieve an acceptable balance between flights
13 over units by commercial air tour operators and the
14 protection of resources in the units and the experi-
15 ences of visitors to the units.

16 (5) Although the mission of the Federal Avia-
17 tion Administration is to develop and maintain a
18 safe and efficient system of air transportation while
19 considering the impact of aircraft noise, the agency
20 continues to have difficulty adequately controlling
21 commercial air tour flights over units.

22 (6) Significant and continuing concerns exist
23 regarding the safety of commercial air tour flights
24 over some units, including concerns for the safety of

1 occupants of the flights, visitors to those units, Fed-
2 eral employees at those units, and the general pub-
3 lic.

4 (7) The concern of the Congress over the ef-
5 fects of low-level flights on units led to the enact-
6 ment, on August 18, 1987, of the Act entitled “An
7 Act to require the Secretary of the Interior to con-
8 duct a study to determine the appropriate minimum
9 altitude for aircraft flying over national park system
10 units” (Public Law 100–91; 101 Stat. 674; 16
11 U.S.C. 1a–1 note).

12 (8) The Act referred to in paragraph (7) re-
13 quires the Director of the National Park Service to
14 identify problems associated with flights by aircraft
15 in the airspace over units.

16 (9) Pursuant to the Act referred to in para-
17 graph (7), on September 12, 1994, the Director sub-
18 mitted a report to Congress entitled “Report On Ef-
19 fects Of Aircraft Overflights On The National Park
20 System”.

21 (10) The National Park Service report con-
22 cluded that, because the details of national park
23 overflights problems are park-specific, no single alti-
24 tude can be identified for the entire National Park
25 System.

1 (11) The National Park Service report pre-
2 sented a number of recommendations for resolution
3 of the problem of national park overflights, includ-
4 ing—

5 (A) the development of airspace and park
6 use resolution processes;

7 (B) the development of a single operational
8 rule to regulate air tour operations;

9 (C) seeking continued improvements in
10 safety and interagency planning related to air-
11 space management; and

12 (D) the development of a Federal Aviation
13 Administration rule to facilitate preservation of
14 natural quiet.

15 (12) The policy of the National Park Service
16 recognizes the importance of natural quiet as a re-
17 source to be conserved and protected in certain
18 units.

19 (13) The National Park Service—

20 (A) defines natural quiet as “the natural
21 ambient sound conditions found in certain units
22 of the National Park Service”; and

23 (B) recognizes that visitors to certain units
24 may reasonably expect quiet during their visits
25 to those units established with the specific goal

1 of providing visitors with an opportunity for sol-
2 itude.

3 (14) The number of flights by aircraft over
4 units has increased rapidly since the date of enact-
5 ment of the Act referred to in paragraph (7) and,
6 due to the high degree of satisfaction expressed by
7 air tour passengers, as well as the economic impact
8 of air tour operations on the tourist industry, the
9 number of flights will likely continue to increase.

10 (15) A progression of aesthetic and safety con-
11 cerns about low altitude flights have been associated
12 with growth in commercial air tour traffic.

13 (16) As the number of flights over units contin-
14 ues to increase, the likelihood exists that there will
15 be a concomitant increase in the number of conflicts
16 regarding management of the airspace over the
17 units.

18 (17) A need exists for a Federal policy to ad-
19 dress the conflicts and problems associated with
20 flights by commercial air tour aircraft in the air-
21 space over units.

22 (18) A statutory process should be established
23 to require the Secretary of Transportation and the

1 Secretary of the Interior, acting through the Direc-
2 tor, to work together to mitigate the impact of com-
3 mercial air tour operations on units, or specific
4 areas within units that are adversely affected by
5 commercial air tour operations.

6 **SEC. 3. DEFINITIONS.**

7 In this Act:

8 (1) ADMINISTRATOR.—The term “Adminis-
9 trator” means the Administrator of the Federal
10 Aviation Administration.

11 (2) AGREEMENT.—The term “agreement”
12 means an agreement entered into by a commercial
13 air tour operator, the Director, and the Adminis-
14 trator under section 4(h) that provides for the appli-
15 cation of relevant provisions of an airspace manage-
16 ment plan for the unit concerned to the commercial
17 air tour operator.

18 (3) AIR TOUR AIRCRAFT.—The term “air tour
19 aircraft” means an aircraft (including a fixed-wing
20 aircraft or a rotorcraft) that makes air tour flights.

21 (4) AIR TOUR FLIGHT.—The term “air tour
22 flight” means a passenger flight conducted by air
23 tour aircraft for the purpose of permitting a pas-
24 senger to the flight to view an area over which the
25 flight occurs.

1 (5) COMMERCIAL AIR TOUR AIRCRAFT.—The
 2 term “commercial air tour aircraft” means any air
 3 tour aircraft used by a commercial air tour operator
 4 in providing air tour flights for hire to the public.

5 (6) COMMERCIAL AIR TOUR OPERATOR.—The
 6 term “commercial air tour operator” means a com-
 7 pany, corporation, partnership, individual, or other
 8 entity that provides air tour flights for hire to the
 9 public.

10 (7) COUNCIL.—The term “Council” means the
 11 National Park Overflight Advisory Council estab-
 12 lished under section 9.

13 (8) DIRECTOR.—The term “Director” means
 14 the Director of the National Park Service.

15 (9) FLIGHT-FREE PARK.—The term “flight-free
 16 park” means a unit over which commercial air tour
 17 operations are prohibited.

18 (10) UNIT.—The term “unit” means a unit of
 19 the National Park System.

20 **SEC. 4. NATIONAL PARK AIRSPACE MANAGEMENT PLANS.**

21 (a) IN GENERAL.—The Director and the Adminis-
 22 trator shall, in accordance with this section, develop and
 23 establish a plan for the management of the airspace above
 24 each unit that is affected by commercial air tour flights

1 to the extent that the Director considers the unit to be
 2 a unit requiring an airspace management plan.

3 (b) PURPOSE OF PLANS.—The purpose of each plan
 4 developed under subsection (a) is to minimize the adverse
 5 effects of commercial air tour flights on the resources of
 6 a unit.

7 (c) DEVELOPMENT OF AIRSPACE MANAGEMENT
 8 PLANS.—

9 (1) TREATMENT OF RELEVANT EXPERTISE.—In
 10 developing plans under subsection (a)—

11 (A) the Administrator shall defer to the
 12 Director in matters relating to the identification
 13 and protection of park resources; and

14 (B) the Director shall defer to the Admin-
 15 istrator in matters relating to the safe and effi-
 16 cient management of airspace.

17 (2) NEGOTIATED RULEMAKING.—In developing
 18 a plan for a unit, the Director and the Adminis-
 19 trator shall consider utilizing negotiated rulemaking
 20 procedures as specified under subchapter III of
 21 chapter 5 of title 5, United States Code, if the Di-
 22 rector and the Administrator determine that the uti-
 23 lization of those procedures is in the public interest.

24 (d) COMMENT ON PLANS.—In developing a plan for
 25 a unit, the Director and the Administrator shall—

1 (1) ensure that there is sufficient opportunity
2 for public comment by air tour operators, environ-
3 mental organizations, and other concerned parties;
4 and

5 (2) give due consideration to the comments and
6 recommendations of the Council and the Federal
7 Interagency Airspace/Natural Resource Coordination
8 Group, or any successor organization to that entity.

9 (e) RESOLUTION OF PLAN INADEQUACIES.—If the
10 Director and the Administrator disagree with respect to
11 any portion of a proposed plan under subsection (a)—

12 (1) the Director and the Administrator shall
13 refer the proposed plan to the Secretary of the Inte-
14 rior and the Secretary of Transportation; and

15 (2) the Secretary of the Interior and the Sec-
16 retary of Transportation shall jointly resolve the dis-
17 agreement.

18 (f) ASSESSMENT OF EFFECTS OF OVERFLIGHTS.—
19 The Director and the Administrator may jointly conduct
20 studies to ascertain the effects of low-level flights of com-
21 mercial air tour aircraft over units that the Director and
22 the Administrator consider necessary for the development
23 of plans under subsection (a).

24 (g) PERIODIC REVIEW.—

1 (1) IN GENERAL.—Not less frequently than
 2 every 5 years after the date of establishment of a
 3 plan under subsection (a), the Director and the Ad-
 4 ministrators shall review the plan.

5 (2) PURPOSE OF REVIEW.—The purpose of the
 6 review shall be to ensure that the plan continues to
 7 meet the purposes for the plan.

8 (3) REVISION.—The Director and the Adminis-
 9 trator may revise a plan if they jointly determine,
 10 based on that review, that the revision is advisable.

11 (h) FLIGHTS OVER UNITS COVERED BY PLANS.—

12 (1) AGREEMENT.—A commercial air tour oper-
 13 ator may not conduct commercial air tour flights in
 14 the airspace over a unit covered by an airspace man-
 15 agement plan developed under subsection (a) unless
 16 the commercial air tour operator enters into an
 17 agreement with the Director and the Administrator
 18 that authorizes such flights.

19 (2) CONTENTS.—An agreement under para-
 20 graph (1) shall—

21 (A) provide for the application of relevant
 22 provisions of the airspace management plan for
 23 the unit concerned to the commercial air tour
 24 operator; and

1 (B) to the maximum extent practicable,
 2 provide for the conduct of air tour flights by
 3 the air tour operator in a manner that mini-
 4 mizes the adverse effects of the air tour flights
 5 on the environment of the unit.

6 **SEC. 5. FLIGHT-FREE PARKS.**

7 For units that, as of January 1, 1997, experienced
 8 no overflights by commercial air tour operators, the Direc-
 9 tor, in consultation with the Administrator, shall—

10 (1) prescribe criteria to identify units where air
 11 tour flights by commercial air tour aircraft would be
 12 incompatible with or injurious to the purposes and
 13 values for which the units were established;

14 (2) identify any units that meet those criteria;
 15 and

16 (3) designate those units as “flight-free park”
 17 units.

18 **SEC. 6. SINGLE OPERATIONAL RULE FOR COMMERCIAL AIR**
 19 **TOUR OPERATIONS.**

20 (a) IN GENERAL.—Except as provided in subsection
 21 (b), the Administrator, after notice and hearing on the
 22 record, shall issue a regulation governing the operation of
 23 all air tour aircraft flights by commercial air tour opera-
 24 tors over units.

25 (b) SEPARATE OPERATIONAL RULES.—

1 (1) IN GENERAL.—The Administrator may
2 issue regulations that prescribe separate operational
3 rules governing the conduct of flights by fixed-wing
4 aircraft and by rotorcraft if the Administrator deter-
5 mines under subsection (a) that separate rules are
6 warranted.

7 (2) DEVELOPMENT OF OPERATIONAL RULE.—
8 In developing an operational rule under paragraph
9 (1), the Administrator shall—

10 (A) consider whether differences in the
11 characteristics and effects on the environment
12 of fixed-wing aircraft and rotorcraft warrant
13 the development of separate operational rules
14 with respect to that craft;

15 (B) provide a mechanism for the Director
16 to recommend individual units or geographically
17 proximate groups of units to be designated as
18 aerial sightseeing areas, as defined by section
19 92.01 of the Federal Aviation Administration
20 Handbook, dated January 1992; and

21 (C) provide a mechanism for the Director
22 to obtain immediate assistance from the Admin-
23 istrator in resolving issues relating to the use of
24 airspace above units with respect to which the
25 issues are of a critical, time-sensitive nature.

1 (c) EFFECT ON AGREEMENTS.—Nothing in this sec-
 2 tion is intended to preclude the Administrator, the Direc-
 3 tor, and a commercial air tour operator from entering into,
 4 under section 4(h), an agreement on the conduct of air
 5 tour flights by the air tour operator over a particular unit
 6 under different terms and conditions from those imposed
 7 by an operational rule issued under this subsection.

8 **SEC. 7. AIRCRAFT SAFETY.**

9 (a) DEVELOPMENT OF A SINGLE STANDARD FOR
 10 CERTIFYING COMMERCIAL AIR TOUR OPERATORS.—

11 (1) COMMENCEMENT OF RULEMAKING.—The
 12 Administrator shall initiate formal rulemaking pro-
 13 ceedings (which shall include a hearing on the
 14 record) for the purpose of revising the regulations
 15 contained in part 135 of title 14, Code of Federal
 16 Regulations (relating to air taxi operators and com-
 17 mercial operators), to prescribe a new subpart to
 18 specifically cover all commercial air tour operators
 19 (as that term shall be defined by the Administrator
 20 under the subpart) that conduct commercial air tour
 21 flights over units.

22 (2) COVERED MATTERS.—The regulations is-
 23 sued under subsection (a) shall address safety and
 24 environmental issues with respect to commercial air
 25 tour flights over units. In issuing the regulations,

1 the Administrator shall attempt to minimize the fi-
 2 nancial and administrative burdens imposed on com-
 3 mercial air tour operators.

4 (b) AIRCRAFT MARKINGS.—

5 (1) REQUIREMENT.—Each operator of commer-
 6 cial air tour aircraft shall display on each air tour
 7 aircraft of the operator the identification marks de-
 8 scribed in paragraph (2).

9 (2) IDENTIFICATION MARKS.—The identifica-
 10 tion marks for the aircraft of a commercial air tour
 11 operator shall—

12 (A) be unique to the operator;

13 (B) be not less than 36 inches in length
 14 (or a size consistent with the natural configura-
 15 tion of the aircraft fuselage);

16 (C) appear on both sides of the air tour
 17 aircraft of the air tour operator and on the un-
 18 derside of the aircraft; and

19 (D) be applied to the air tour aircraft of
 20 the air tour operator in a highly visible color
 21 that contrasts sharply with the original base
 22 color paint scheme of the aircraft.

23 (c) AERONAUTICAL CHARTS.—The Administrator
 24 shall ensure that the boundaries of each unit and the pro-
 25 visions of the airspace management plan, operational rule,

1 or Special Federal Aviation Regulation (SFAR), if any,
2 with respect to each unit are accurately displayed on aero-
3 nautical charts.

4 (d) FLIGHT MONITORING SYSTEMS.—

5 (1) IN GENERAL.—The Administrator shall
6 carry out a study of the feasibility and advisability
7 of requiring that commercial air tour aircraft operat-
8 ing in the airspace over units have onboard an auto-
9 matic flight tracking system capable of monitoring
10 the altitude and ground position of the commercial
11 air tour aircraft.

12 (2) DETERMINATION BY ADMINISTRATOR.—If
13 the Administrator determines under the study re-
14 quired under paragraph (1) that the use of flight
15 tracking systems in commercial air tour aircraft is
16 feasible and advisable, the Administrator and the
17 Director shall jointly develop a plan for implement-
18 ing a program to monitor the altitude and position
19 of commercial air tour aircraft over units.

20 (e) NATIONAL DATA BASE FOR COMMERCIAL AIR
21 TOUR OPERATORS.—The Administrator shall—

22 (1) establish and maintain a data base concern-
23 ing all commercial air tour aircraft operated by com-
24 mercial air tour operators that shall be designed to
25 provide data that shall be used in making—

1 (A) determinations of—

2 (i) the scope of commercial air tour
3 flights; and

4 (ii) accident rates for commercial air
5 tour flights; and

6 (B) assessments of the safety of commer-
7 cial air tour flights; and

8 (2) on the basis of the information in the data
9 base established under paragraph (1), ensure that
10 each flight standards district office of the Adminis-
11 tration that serves a district in which commercial air
12 tour operators conduct commercial air tour flights is
13 adequately staffed to carry out the purposes of this
14 Act.

15 **SEC. 8. EXCEPTIONS.**

16 (a) **FLIGHT EMERGENCIES.**—This Act does not apply
17 to any aircraft—

18 (1) experiencing an in-flight emergency;

19 (2) participating in search and rescue, firefight-
20 ing or police emergency operations;

21 (3) carrying out park administration or mainte-
22 nance operations; or

23 (4) complying with air traffic control instruc-
24 tions.

1 (b) FLIGHTS BY MILITARY AIRCRAFT.—This Act
 2 does not apply to flights by military aircraft, except that
 3 the Secretary of Defense is encouraged to work jointly
 4 with the Secretary of Transportation and the Secretary
 5 of the Interior in pursuing means to mitigate the impact
 6 of military flights over units.

7 (c) FLIGHTS FOR COMMERCIAL AERIAL PHOTOG-
 8 RAPHY.—The Director and the Administrator shall jointly
 9 develop restrictions and fee schedules for aircraft or rotor-
 10 craft engaged in commercial aerial photography over units
 11 at altitudes that the Director and the Administrator deter-
 12 mine will impact adversely the resources and values of af-
 13 fected units.

14 **SEC. 9. NATIONAL PARK OVERFLIGHT ADVISORY COUNCIL.**

15 (a) ESTABLISHMENT.—There is established a com-
 16 mission to be known as the “National Park Overflight Ad-
 17 visory Council”.

18 (b) MEMBERSHIP.—

19 (1) IN GENERAL.—The Council shall be com-
 20 prised of the following members:

21 (A) Members from each of the following
 22 groups, appointed jointly by the Director and
 23 the Administrator:

1 (i) Environmental or conservation or-
 2 ganizations, citizens' groups, and other
 3 groups with similar interests.

4 (ii) The commercial air tour industry
 5 and organizations with similar interests.

6 (B) Representatives of departments or
 7 agencies of the Federal Government.

8 (C) Such other persons as the Adminis-
 9 trator and the Director consider appropriate.

10 (c) DUTIES.—The Council shall—

11 (1) determine the effects of commercial air tour
 12 flights in the airspace over the units on the environ-
 13 ment of the units;

14 (2) determine the economic effects of restric-
 15 tions or prohibitions on the flights;

16 (3) solicit and receive comments from interested
 17 individuals and groups on the flights;

18 (4) develop recommendations for means of re-
 19 ducing the adverse effects of the flights on the units;

20 (5) explore financial and other incentives that
 21 could encourage manufacturers to advance the state-
 22 of-the-art in quiet aircraft and rotorcraft technology
 23 and encourage commercial air tour operators to im-
 24 plement the technology in flights over units;

1 (6) provide comments and recommendations to
2 the Director and the Administrator under section 4;

3 (7) provide advice or recommendations to the
4 Director, the Administrator, and other appropriate
5 individuals and groups on matters relating to flights
6 over units; and

7 (8) carry out such other activities as the Direc-
8 tor and the Administrator jointly consider appro-
9 priate.

10 (d) MEETINGS.—The Council shall first meet not
11 later than 180 days after the date of enactment of this
12 Act, and shall meet thereafter at the call of a majority
13 of the members of the Council.

14 (e) ADMINISTRATION.—

15 (1) COMPENSATION OF NON-FEDERAL MEM-
16 BERS.—Members of the Council who are not officers
17 or employees of the Federal Government shall serve
18 without compensation for their work on the Council,
19 but shall be allowed travel expenses, including per
20 diem in lieu of subsistence, in the same manner as
21 persons employed intermittently in Government serv-
22 ice under section 5703(b) of title 5, United States
23 Code, to the extent funds are available for that pur-
24 pose.

1 (2) COMPENSATION OF FEDERAL MEMBERS.—

2 Members of the Council who are officers or employ-
 3 ees of the Federal Government shall serve without
 4 compensation for their work on the Council other
 5 than that compensation received in their regular
 6 public employment, but shall be allowed travel ex-
 7 penses, including per diem in lieu of subsistence, as
 8 authorized by law, to the extent funds are available
 9 for that purpose.

10 (f) REPORTS.—Not later than 1 year after the initial
 11 meeting of the Council, and annually thereafter, the Coun-
 12 cil shall submit to Congress, the Administrator, and the
 13 Director a report that—

14 (1) describes the activities of the Council under
 15 this section during the preceding year; and

16 (2) sets forth the findings and recommenda-
 17 tions of the Council on matters related to the miti-
 18 gation of the effects on units of flights of commer-
 19 cial air tour operators over units.

20 (g) AUTHORIZATION OF APPROPRIATIONS.—There
 21 are authorized to be appropriated such sums as may be
 22 necessary to carry out the provisions of this section.

23 **SEC. 10. EXEMPTION FOR STATE OF ALASKA.**

24 Nothing in this Act shall affect—

- 1 (1) the management of units in the State of
- 2 Alaska; or
- 3 (2) any aircraft operations over or within units
- 4 in the State of Alaska.

○